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IN THE  
**Supreme Court of the United States**

October Term, 1958

No. **378**

ANONYMOUS NOS. 6 AND 7,

*Appellants,*

v,

HON. GEORGE A. ARKWRIGHT, as Justice of the  
Supreme Court of the State of New York,

*Appellee.*

ON APPEAL FROM THE COURT OF APPEALS OF THE  
STATE OF NEW YORK

**JURISDICTIONAL STATEMENT**

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## JURISDICTIONAL STATEMENT

Appellants Howard Bluestein (described above as Anonymous No. 6) and Neal Percudani (described above as Anonymous No. 7) appeal from the final orders of the Court of Appeals of the State of New York, dated and entered in the office of the Clerk of said Court of Appeals on June 25, 1958, dismissing, upon the ground that no substantial constitutional question is involved, their appeals taken on constitutional grounds from final orders of the Appellate Division of the Supreme Court of the State of New York, Second Department, dated and entered in the Appellate Division Clerk's office on May 26, 1958, which confirmed the determinations and mandates made at the Additional Special Term, Kings County (for a Judicial Inquiry by the Court into Certain Alleged Illegal,



Corrupt and Unethical Practices and of Alleged Conduct Prejudicial to the Administration of Justice by Attorneys and Counselors-at-law, and by Others Acting in Concert with Them, in the County of Kings), dated and entered in the office of the Clerk of Kings County, State of New York, on April 24, 1958, adjudging each appellant guilty of a criminal contempt of court and appellants submit this statement to show that the Supreme Court of the United States has jurisdiction and that substantial and important constitutional questions are presented respecting the right to representation by counsel.

### Opinions Below

The memoranda decisions of the Court of Appeals of the State of New York are reported in 4 N. Y. 2d 1034. The Memoranda decisions of the Appellate Division of the Supreme Court of the State of New York, Second Department, are reported in 6 A. D. 2d 719 (2 and 3). These, and the memoranda decisions in the companion case of *Matter of Anonymous (M.) v. Arkwright*, 5 A. D. 790, motion for leave to appeal denied; 4 N. Y. 676, are appended hereto. There are also appended hereto copies of the determinations and mandates of the Additional Special Term and the final orders of the Appellate Division and the Court of Appeals.

### Jurisdiction

These were original petitions in the Appellate Division to review the determinations and mandates made at the Additional Special Term (Judicial Inquiry), convicting each appellant of a criminal contempt of court for refusing, after being sworn and in the immediate view and presence of Mr. Justice Arkwright, the appellee, a justice of the Supreme Court, to answer questions put to him, in violation of Sections 750(5), 751, Judiciary Law of the State

of New York (McKinney's Consolidated Laws of New York, Book 29). Each appellant was sentenced to thirty days imprisonment. Each served two days and is presently enlarged on bail in the sum of \$2500. "Such" determinations and mandates are "reviewable by a proceeding under article seventy-eight of the civil practice act", Section 752, Judiciary Law. Section 1287 of Article 78 of the Civil Practice Act (Gilbert-Bliss, Civil Practice Act of New York), provides that if the petition be directed against a justice of the Supreme Court, the application shall be made to the Appellate Division in the first instance.

The petitions made the claim that appellants were denied Fourteenth Amendment, United States Constitution, due process of law, in that they were denied the presence of their counsel in the hearing room during the questioning.

Relying upon the companion case of *Matter of Anonymous (M.) v. Arkwright* (5 A. D. 790, leave to appeal denied, 4 N. Y. 2d 676), the Appellate Division confirmed the determinations and mandates of the appellee.

In the companion case, the right to exclude counsel from the hearing room during questioning was expressly based by the Appellate Division on its construction of Section 90, subdivision 10, of the Judiciary Law. The Judicial Inquiry was conducted by order of the Appellate Division. In the companion case, the Appellate Division wrote (5 A. D. 2d 790):

"The order also provided that 'for the purpose of protecting the reputation of innocent persons, the said inquiry and investigation shall be conducted in private, pursuant to the provisions of the Judiciary Law (Section 90, subdivision 10); \* \* \*'"

Thereupon, appellants appealed as of right to the Court of Appeals of the State of New York, the highest state court. Their appeals were taken pursuant to the

provisions of Section 588, subdivision 1, (a), Civil Practice Act, which allows an appeal as of right where a federal constitutional question is involved.

By the orders dated and entered in the office of the Clerk of the Court of Appeals on June 25, 1958, that court on appellee's motion dismissed the appeals, expressly, "upon the ground that no substantial constitutional question is involved".

Each appellant filed a notice of appeal herein with the Clerk of the Court of Appeals on July 25, 1958.

Each appellant also filed a notice of appeal herein with the Clerk of the Appellate Division, Second Department, on July 24, 1958, because the latter is possessed of part of the record required for review by this Court.

The jurisdiction of this Court to review these cases by direct appeal is invoked under 28 U. S. C., Section 1257(2).

Failing that, appellants invoke this Court to treat the papers as applications for writs of certiorari under 28 U. S. C., Section 2103.

*Tumey v. Ohio*, 273 U. S. 510, and *Matthews v. Huwe*, 269 U. S. 262, sustain the jurisdiction of this Court, in that the Court of Appeals orders dismissing the appeals, being grounded upon the absence of a debatable constitutional question, are in effect affirmances on the merits.

*Matter of Groban*, 352 U. S. 330, sustains the jurisdiction of this Court by direct appeal, in that the denial of counsel was based upon the application of subdivision 10, Section 90, Judiciary Law.

## Statute Involved

Subdivision 10, Section 90, Judiciary Law of the State of New York, which may be found in McKinney's Consolidated Laws of New York, Annotated, Book 29, reads, as follows:

*"SEC. 90. Admission to and removal from practice by appellate division*

10. Any statute or rule to the contrary notwithstanding, all papers, records and documents upon the application or examination of any person for admission as an attorney and counsellor at law and upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents. In the discretion of the presiding or acting presiding justice of said appellate division, such order may be made either without notice to the persons or attorneys to be affected thereby or upon such notice to them as he may direct. In furtherance of the purpose of this subdivision, said justices are also empowered, in their discretion, from time to time to make such rules as they may deem necessary. Without regard to the foregoing, in the event that charges are sustained by the justices of the appellate division having jurisdiction in any complaint, investigation or proceeding relating to the conduct or discipline of any attorney, the records and documents in relation thereto shall be deemed public records."

## Questions Presented

Whether Section 90, subdivision 10, of the Judiciary Law of the State of New York, in so far as it provides that "any inquiry, investigation or proceeding relating to

the conduct or discipline of an attorney or attorneys, shall be sealed and deemed private and confidential", as construed and applied in these cases, is unconstitutional in that it denied Fourteenth Amendment, United States Constitution, due process of law to appellants who are not attorneys at law and who had been told before their questioning by a member of the Inquiry staff that evidence of a prima facie case of crime had already been gathered and was ready to be sent to the District Attorney for prosecution and who nevertheless were denied the presence of their counsel in the courtroom during the questioning as a result of which the appellants refused to answer certain questions?

Whether the judgments on appeal in the circumstances stated in the previous question denied to appellants such due process?

### Statement

The Judicial Inquiry was conducted by Mr. Justice Arkwright under an order made by the Appellate Division. The scope of the inquiry and the main provisions of the order were thus summarized by the Appellate Division in the companion case (5 A. D. 2d 790-791):

"By an order of this court dated January 21, 1957, as amended by subsequent order dated February 11, 1957, a judicial inquiry and investigation was directed with respect to the improper practices and abuses by attorneys in Kings County and by persons acting in concert with them, as alleged in the petition of the Brooklyn Bar Association. In part, the order directed inquiry with respect to practices 'involving professional misconduct, fraud, deceit, corruption, crime and misdemeanor, by attorneys and by others acting in concert with them' and with 'respect to any and all conduct prejudicial to the administration of justice by attorneys and others acting in concert with them.' The order appointed an additional Special Term of the Supreme Court to conduct the inquiry and investigation and pro-



vided that the inquiry and investigation shall be conducted by a named Justice of the Supreme Court, 'with full power to compel the attendance of witnesses, their testimony under oath and the production of all relevant books, papers and records'. An attorney nominated by the Brooklyn Bar Association was designated to aid said Justice in the conduct of the inquiry and in the prosecution of said investigation. The order also provided that 'for the purpose of protecting the reputation of innocent persons, the said inquiry and investigation shall be conducted in private, pursuant to the provisions of the Judiciary Law (Section 90, subdivision 10); that all the facts, testimony and information adduced, and all papers relating to this inquiry and investigation, except this order, shall be sealed and be deemed confidential; and that none of such facts, testimony and information and none of the papers and proceedings herein, except this order, shall be made public or otherwise divulged until the further order of this court' and 'that upon the conclusion of said inquiry and investigation the said Justice shall make and file with this court his report setting forth his proceedings, his findings and his recommendations.' "

What is done with the evidence adduced at the Judicial Inquiry was thus described in Mr. Justice Arkwright's report to the Appellate Division on June 11, 1958, at page 6:

"Your Court has also permitted Mr. Hurley and me to refer the evidence adduced at the Additional Special Term regarding 10 attorneys to the District Attorney of Kings County for possible criminal prosecution as well as for mandatory disciplinary proceedings. The District Attorney has initiated disciplinary proceedings against two (2) of these attorneys. In addition, a Kings County Grand Jury has returned an indictment for grand larceny against another attorney. Furthermore, your Honorable Court has authorized Mr. Hurley and myself to refer the facts which have been elicited at the Additional Special Term concerning the activities of certain doctors to the State Board of Regents for proper action."



Appellants were subpoenaed to appear and testify at the Judicial Inquiry. Failure to appear or testify is punishable as a contempt of court.

Appellants are not attorneys-at-law. They are licensed private detectives and investigators. They do business as partners under the trade name of Gotham Claims Service.

Appellants repeatedly protested to Mr. Justice Arkwright that they were being questioned as persons themselves accused of crime, not as mere witnesses, and that the accusation had been made by a member of the staff of the Judicial Inquiry. See transcript of testimony, pages 21, 22, 23, 33, 42, 46.

Mr. Justice Arkwright held a hearing on this. Here is the text of the admissions of the staff member in question, as shown upon the transcript of the testimony at pages 92-94, with italics supplied:

*"By the Court:*

Q. You heard what was said. Do you wish to say anything? A. My recollection of the facts as they took place on December 4th was that following Mr. Zangara being before the Court and asking for an adjournment, that he and his clients approached me in the outer foyer outside the courtroom and Mr. Zangara, as spokesman for the group, asked me exactly what was wanted of his clients in this matter. I, at that time, told Mr. Zangara that all—I don't know my exact language, but *I indicated that we did not intend to pussyfoot with them, we were not trying to trap them in any manner, but that testimony and evidence had come before us in the course of our investigation that someone in the employ of the Gotham Claims Service had, with some frequency, obtained statements from defendants, holding themselves out to be from the defendant's carrier and also holding themselves out to be from other agencies, and in one instance the district attorney's office. That our investigation had disclosed that these statements had been tampered with, and that it was relative to this that we wished to speak*

*to them to find out if these statements were actually taken by the Gotham Claims Service, for what attorneys these statements were taken, and whether the tampering was done by them or their employees or at the direction of some attorney.*

I told Mr. Zangara that the interests of the Judicial Inquiry was primarily directed at the attorneys that they had done business with, that if they cooperated fully I felt that the Court would take that into consideration if something unethical had been done.

*I further stated that in my opinion there was prima facie evidence in the event that the clients decided to plead the Fifth Amendment, to refer this matter to the district attorney.*

I stated it was my opinion, I did not indicate that that would be done, I did not indicate that it was even being considered at the time. I was merely giving my opinion for which they had asked. I made it quite clear that this was all off the record, that they were asking what amounted to a favor, and I was being very frank and honest with them. And I was thanked for indicating to them what the picture was.

That is to my knowledge the full extent of the conversation.

In fact, I remember indicating that any final action on the matter would have to be on the part of your Honor and that the Appellate Division would finally rule as to what would actually be done."

Facing such imminent peril of prosecution for crime, appellants requested that their counsel be permitted in the courtroom during the questioning.

As to each appellant, the Appellate Division found that: "Refusal to answer was on the sole ground that petitioner's attorney was not permitted to be present in the hearing room during the interrogation," 6 A. D. 2d 719.

Appellant's attorney made it clear to Mr. Justice Arkwright that the claim to the right of counsel during ques-

tioning was made "under the due process clause of the Fourteenth Amendment." See transcript of testimony, page 49.

The same claim was made by each appellant in his petition to the Appellate Division to review the determinations and mandates made by Mr. Justice Arkwright. See paragraph 8 of each petition.

In the companion case, the Appellate Division had rested its approval of Mr. Justice Arkwright's exclusion of counsel squarely on its application of subdivision 10, Section 90, Judiciary Law, which provides that any such inquiry shall be "private and confidential," 5 A. D. 2d 790. In his answer to the petition in the Appellate Division of each appellant herein Mr. Justice Arkwright stated that he excluded counsel from the hearing room during questioning in order to maintain that "privacy". See paragraph Tenth of Mr. Justice Arkwright's answer to each petition. As to each appellant, the Appellate Division held that the companion case was conclusive, and wrote, 6 A. D. 2d 719:

"Petitioner contends that special facts distinguish this proceeding from *Matter of Anonymous (M.) v. Arkwright* (5 A. D. 2d 790, motion for leave to appeal denied 4 N. Y. 2d 676) and *Matter of Anonymous (S.) v. Arkwright* (5 A. D. 2d 792) in that petitioner, prior to being called to testify, was informed that he was being called not merely as a witness but that he was being investigated and that sufficient evidence was already available to warrant presentation thereof to a Grand Jury or District Attorney. Determination unanimously confirmed, without costs."

### **The Questions Are Substantial and Important**

The judgments on appeal were based upon a misapprehension of the reach of this Court's decision in *Matter of Groban*, 352 U. S. 330.

In the companion case the Appellate Division relied upon *Groban*, 5 A. D. 2d 790, 791, and decided the instant cases upon the authority of the companion case, 6 A. D. 2d 719. The other case cited by the Appellate Division from 5 A. D. 2d 792, has no bearing upon the questions herein presented. There the Appellate Division reversed the contempt upon another ground.

In *Groban*, this Court held that a statute permitting a state fire marshal to conduct private investigation to determine causes of fire, insofar as it authorizes exclusion of counsel while witness testifies, is not repugnant to due process.

There were three opinions in *Groban*: a majority opinion of three written by Mr. Justice Reed; a concurring opinion by Mr. Justice Frankfurter, with whom Mr. Justice Harlan joined; and a dissent by Mr. Justice Black, with whom the Chief Justice and Justices Douglas and Brennan joined.

There are several significant grounds upon which the instant cases differ from the majority opinion.

Mr. Justice Reed wrote (p. 333):

"The mere fact that suspicion may be entertained of such a witness, as appellants believed existed here, though without allegation of facts to support such belief, does not bar the taking of testimony in a private investigatory proceeding."

In the instant cases it is not a matter of "suspicion" only by the authorities and not a mere "belief" by appellants without allegations of fact to support it. Here it stands admitted on the record that before appellants were questioned they had been told by a member of the Inquiry staff that sufficient evidence had already been gathered against them of a *prima facie* case of crime that was ready to be sent to the District Attorney.



Mr. Justice Reed further wrote (334):

"Possibility of improper exercise of opportunity to examine is not in our judgment a sound reason to set aside a State's procedure for fire prevention."

There is here no such attendant urgency as that involved in investigating the cause of a fire. This inquiry is conducted by a Justice of the Supreme Court in the calm atmosphere and with all the paraphernalia of a courtroom and with a large staff of counsel on one side. The power exercised here is not administrative, but judicial. The punishment here was meted out by a "court" for "refusal \* \* \* ; after being sworn, to answer any legal and proper interrogatory". See Judiciary Law, Section 750, subdivision 5. A court is the one place in the world where a person accused should not be denied counsel.

Mr. Justice Reed further wrote (p. 334):

"As in similar situations abuses may be corrected as they arise, for example, by excluding from subsequent prosecutions evidence improperly obtained."

Here there would be no possibility of correcting any such abuse. Here the evidence is taken by a "court". There is no conceivable basis upon which evidence so taken may be excluded from subsequent prosecutions. Unless the parties have the guiding hand of counsel at the time the evidence is first given, they are forever deprived of correcting any abuse that may be involved.

Finally, Mr. Justice Reed wrote (p. 334):

"Ohio, like many other States, maintains a division of the state government directed by the Fire Marshal for the prevention of fires and reduction of fire losses. Section 3737.13, which has been in effect since 1900, represents a determination by the Ohio Legislature that investigations conducted in private may be the most effective method of bringing to light facts concerning the origins of fires, and, in the long

run, of reducing injuries and losses from fires caused by negligence or by design. We cannot say that this determination is unreasonable. The presence of advisors to witnesses might easily so far encumber an investigatory proceeding as to make it unworkable or unwieldy."

No such possibility exists here. Counsel for persons questioned here would be in a "court", subject to all restraints and disciplines that a court can impose. Indeed the order for the Inquiry here did not exclude the presence of counsel for persons questioned in all cases. In the companion case, 5 A. D. 2d 790, the Appellate Division wrote (p. 791):

"In its discretion the additional Special Term might have permitted petitioner's attorney to be present while petitioner was being questioned, since it is clear that he was not merely a witness as to improper conduct of others but was himself a subject of the inquiry as to his own alleged acts of professional misconduct."

The question here, therefore, is not one of the presence of counsel to the person examined encumbering the proceeding so as to make it unworkable or unwieldy. The presence of such counsel in exceptional cases was envisioned in the order itself.

The question here is whether the presence of such counsel is a matter of constitutional right or of mere "discretion". In the companion case the Appellate Division wrote that the person examined was himself the subject of inquiry as to his own alleged "acts of professional misconduct". A distance separates "professional misconduct" by a lawyer from crime. *People ex rel. Karlin v. Culkin*, 248 N. Y. 465. In the cited case, Chief Judge Cardozo wrote (p. 470):

"The precise question to be determined is whether there is power in the Appellate Division to direct a general inquiry into the conduct of its own



officers, the members of the bar, and in the course of that inquiry to compel one of those officers to testify as to his acts in his professional relations. The grand jury inquires into crimes with a view to punishment or correction through the sanctions of the criminal law. There are, however, many forms of professional misconduct that do not amount to crimes."

Here, appellants were asked to testify after they had already been informed by a member of the Inquiry staff that a *prima facie* case of crime had already been established against them and was ready to be sent to the District Attorney for prosecution. Here, the presence of their counsel during the questioning was a constitutional right of due process.

The instant cases also differ from the concurring opinion in *Groban*.

Mr. Justice Frankfurter there wrote that the Ohio statute was not directed to the "examination of suspects" (p. 336). Here, before the examination, the appellants had already been accused of crime. Mr. Justice Frankfurter further wrote that in *Groban* there was an "administrative inquiry \* \* \* *in camera*" (p. 336). Here there was a judicial inquiry in court. Lastly, Mr. Justice Frankfurter wrote (p. 337):

"The Due Process Clause does not disregard vital differences. If it be said that these are all differences of degree, the decisive answer is that recognition of differences of degree is inherent in due regard for due process."

Here there are differences from *Groban* and they are vital and should be recognized so as to accord to appellants due process.

The four dissenters in *Groban* were of opinion that even on the facts of that case there was a denial of due process. They thought that even *Groban* (p. 338)

"disregards 'this nation's historic distrust of secret proceedings' and decides contrary to the general principle laid down by this Court in one of its landmark decisions that an accused " \* \* \* requires the guiding hand of counsel at every step in the proceedings against him'."

Descending to the particulars of the *Groban* case, Mr. Justice Black wrote (p. 344):

"I also firmly believe that the Due Process Clause requires that a person interrogated be allowed to use legal counsel whenever he is compelled to give testimony to law-enforcement officers which may be instrumental in his prosecution and conviction for a criminal offense. This Court has repeatedly held that an accused in a state criminal prosecution has an unqualified right to make use of counsel at every stage of the proceedings against him. The broader implications of these decisions seem to me to support appellants' right to use their counsel when questioned by the Deputy Fire Marshal. It may be that the type of interrogation which the Fire Marshal and his deputies are authorized to conduct would not technically fit into the traditional category of formal criminal proceedings, but the substantive effect of such interrogation on an eventual criminal prosecution of the person questioned can be so great that he should not be compelled to give testimony when he is deprived of the advice of his counsel. It is quite possible that the conviction of a person charged with arson or a similar crime may be attributable largely to his interrogation by the Fire Marshal. The right to use counsel at the formal trial is a very hollow thing when, for all practical purposes, the conviction is already assured by pre-trial examination."

Then, answering a suggestion that the privilege against self-incrimination is ample protection, he wrote (pp. 345-346):

"The average witness has little if any idea when or how to raise any of his constitutional privileges."

There is no requirement in the Ohio statutes that the fire-prevention officers must inform the witness that he is privileged not to incriminate himself. And in view of the intricate possibilities of waiver which surround the privilege he may easily unwittingly waive it. If the witness is coerced or misled by his interrogators he may not dare to raise the privilege. Undoubtedly he will be made aware that hanging over his head at all times is the officer's power to punish him for contempt—a power whose limitations the witness will not understand.”

Answering a suggestion that grand jury procedure is relevant, he further wrote (pp. 346-347):

“But any surface support the grand jury practice may lend disappears upon analysis of that institution. The traditional English and American grand jury is composed of 12 to 23 members selected from the general citizenry of the locality where the alleged crime was committed. They bring into the grand jury room the experience, knowledge and viewpoint of all sections of the community. They have no axes to grind and are not charged personally with the administration of the law. No one of them is a prosecuting attorney or law-enforcement officer ferreting out crime. It would be very difficult for officers of the state seriously to abuse or deceive a witness in the presence of the grand jury.”

Mr. Justice Black concluded thus (p. 353):

“Modern as well as ancient history bears witness that both innocent and guilty have been seized by officers of the state and whisked away for secret interrogation or worse until the groundwork has been securely laid for their inevitable conviction. While the labels applied to this practice have frequently changed, the central idea wherever and whenever carried out remains unchanging—extraction of ‘statements’ by one means or another from an individual by officers of the state while he is held incommunicado.”

Two more cases on the right to counsel decided by this Court at end of term require comment.

*Crooker v. California*, 357 U. S. 433, and *Cicena v. La Gay*, 357 U. S. 504, held that the bare fact of refusal by state authorities to honor a request to confer with counsel about to be retained or already retained during a period of police interrogation is of itself no violation of due process. There was division in both, five to four and five to three, Mr. Justice Brennan abstaining in the latter.

These cases also do not reach the questions presented by the instant cases.

In *Cicena*, this Court held that the claim of right to confer with counsel there had been "disposed of by *Crooker*" 357 U. S. 508.

In *Crooker*, the questions presented were thus stated by this Court (p. 434):

"Petitioner, under sentence of death for murder of his paramour, claims that his conviction in a California court violates Fourteenth Amendment due process of law because (1) the confession admitted into evidence over his objection had been coerced from him by state authorities, and (2) even if his confession was voluntary it occurred while he was without counsel because of the previous denial of his request therefor."

This Court there found that the confession was "voluntary" (p. 438). The Court pointed to the evidence that (p. 437):

"Before being transferred to the West Los Angeles Police Station he was advised by a police lieutenant, 'you don't have to say anything that you don't want to,' \* \* \*."

Then this Court there disposed of the second contention (p. 439):

"that the use of any confession obtained from him during the time of such denial would itself be barred by the Due Process Clause, even though freely made. We think petitioner fails to sustain the first point, and therefore we do not reach the second."

In other words, this Court there held that such denial of counsel may be an element of coercion which may be shown at the trial in impeachment of the voluntariness of the confession.

In both respects the instant cases differ from the last cited cases. Here the evidence was not to be "voluntary". Appellants were under coercion of subpoena on pain of contempt to give their evidence. Here, moreover, there would be no way of correcting any abuse of their rights at a subsequent prosecution. The evidence, it has already been shown, would be taken by a "court" and unless appellants have the guiding hand of counsel at the time the evidence is first given, they would forever be deprived of correcting any abuse that may be involved.

The instant cases fall squarely within the following portion of this Court's opinion in *Crooker* (p. 439):

"Under these principles, state refusal of a request to engage counsel violates due process not only if the accused is deprived of counsel at trial on the merits, *Chandler v. Fretag, supra*, but also if he is deprived of counsel for any part of the pretrial proceedings, provided that he is so prejudiced thereby as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice'."

The questions presented by the instant appellants are substantial.

They are also important. The right to employ counsel in criminal cases has a "high place" in our scheme of



procedural safeguards. *Cicenia*, page 509. As this Court further wrote in *Crooker* (p. 434):

“Certiorari was granted because of the serious due process implications that attend state denial of a request to employ an attorney.”

The instant cases should be heard and decided on the merits.

Respectfully submitted,

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## APPENDIX A

### Texts of Official Reports of Memoranda Decisions

#### Appellate Division Decisions Herein Reported 6 A D 2d 719 (2 and 3)

2 In the Matter of ANONYMOUS No. 6, Petitioner, against GEORGE A. ARKWRIGHT, as Justice of the Supreme Court, Respondent.—Proceeding to review a determination adjudging petitioner, a licensed private detective and investigator, guilty of a criminal contempt for refusing to answer questions at a judicial inquiry, and imposing punishment. Refusal to answer was on the sole ground that petitioner's attorney was not permitted to be present in the hearing room during the interrogation. Petitioner contends that special facts distinguish this proceeding from *Matter of Anonymous (M.) v. Arkwright* (5 A D 2d 790, motion for leave to appeal denied 4 N Y 2d 676) and *Matter of Anonymous (S.) v. Arkwright* (5 A D 2d 792) in that petitioner, prior to being called to testify, was informed that he was being called not merely as a witness but that he was being investigated and that sufficient evidence was already available to warrant presentation thereof to a Grand Jury or District Attorney. Determination unanimously confirmed, without costs. No opinion. Present—Nolan, P. J., Wenzel, Beldock, Ughetta and Hallinan, JJ.

3 In the Matter of ANONYMOUS No. 7, Petitioner, against GEORGE A. ARKWRIGHT, as Justice of the Supreme Court, Respondent.—Proceeding to review a determination adjudging petitioner, a licensed private detective and investigator, guilty of a criminal contempt for refusing to answer questions at a judicial inquiry, and imposing pun-

*Appellate Division Decisions Herein Reported*  
*6 A. D. 2d 719 (2 and 3)*

ishment. Refusal to answer was on the sole ground that petitioner's attorney was not permitted to be present in the hearing room during the interrogation. Petitioner contends that special facts distinguish this proceeding from *Matter of Anonymous v. Arkwright* (5 A D 2d 790) and *Matter of Anonymous v. Arkwright* (5 A D 2d 792, motion for leave to appeal denied in both proceedings 4 N Y 2d 676) in that petitioner, prior to being called to testify, was informed that he was being called not merely as a witness but that he was being investigated and that sufficient evidence was already available to warrant presentation thereof to a Grand Jury or District Attorney. Determination unanimously confirmed, without costs. No opinion. Present—Nolan, P. J., Wenzel, Beldock, Ughetta and Hallinan, JJ.

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**Court of Appeals Decisions Herein**

Note: Counsel is informed that the official reports of the Court of Appeals decisions herein will be found in 4 N Y 2d 1034.

At this writing, the text of the official report is not yet available for copy. The decisions themselves are included in the certified transcript made up by the Clerk of the Court of Appeals and filed in this Court.

**Appellate Division Decision in the Companion Case  
Reported in 5 A D 2d 790-791**

8 In the Matter of M. ANONYMOUS, Petitioner against GEORGE A. ARKWRIGHT, as Justice of the Supreme Court of the State of New York, Respondent.—By an order of this court dated January 21, 1957, as amended by subsequent order dated February 11, 1957, a judicial inquiry and investigation was directed with respect to the improper practices and abuses by attorneys in Kings County and by persons acting in concert with them, as alleged in the petition of the Brooklyn Bar Association. In part, the order directed inquiry with respect to practices “involving professional misconduct, fraud, deceit, corruption, crime and misdemeanor, by attorneys and by others acting in concert with them” and with “respect to any and all conduct prejudicial to the administration of justice by attorneys and others acting in concert with them”. The order appointed an additional Special Term of the Supreme Court to conduct the inquiry and investigation and provided that the inquiry and investigation shall be conducted by a named Justice of the Supreme Court, “with full power to compel the attendance of witnesses, their testimony under oath and the production of all relevant books, papers and records”. An attorney nominated by the Brooklyn Bar Association was designated to aid the said Justice in the conduct of the inquiry and in the prosecution of said investigation. The order also provided that “for the purpose of protecting the reputation of innocent persons, the said inquiry and investigation shall be conducted in private, pursuant to the provisions of the Judiciary Law (Section 90, subdivision 10); that all the facts, testimony and information adduced, and all papers relating to this inquiry and investigation, except this order, shall be sealed and be deemed confidential; and that none of such facts, testimony and information and none of the papers and proceedings herein, except this order, shall be made public or otherwise divulged until the further order of this court” and

*Appellate Division Decision in the Companion Case  
Reported in 5 A. D. 2d 790-791*

"that upon the conclusion of said inquiry and investigation the said Justice shall make and file with this court his report setting forth his proceedings, his findings and his recommendations." On or about July 19, 1957 petitioner submitted to this court his resignation as an attorney and counsellor-at-law, but no order has been entered upon his purported resignation. Pursuant to subpoena, petitioner attended at the additional Special Term, was sworn and refused to answer certain questions. By this proceeding pursuant to article 78 of the Civil Practice Act, petitioner seeks to review the order of the additional Special Term adjudging him guilty of contempt and fining him \$250. No issue is raised as to whether the review of the contempt order by an article 78 proceeding is proper. Determination unanimously confirmed, without costs. The fine provided for in the order is to be paid within 30 days from the entry of the order hereon. Petitioner challenges the power and jurisdiction of the Appellate Division to make the order, and the power and jurisdiction of the additional Special Term to conduct the investigation as to him, as he had resigned from the Bar. He did not refuse to answer on the ground that his answers might tend to incriminate him. He reserved the alleged constitutional rights to refuse to answer questions (N. Y. Const., art. I, §§ 6, 12; U. S. Const., 4th, 5th Amdts.) and based his refusal to answer on the ground that the additional Special Term excluded his attorney while he was being questioned. It was within the power and jurisdiction of this court to make the order directing the inquiry and investigation (N. Y. Const., art. VI, § 2; Judiciary Law, §§ 86, 90; *Matter of Bar Assn. of City of N. Y.*, 222 App. Div. 580; *Matter of Brooklyn Bar Assn.*, 223 App. Div. 149; *People ex rel. Karlin v. Culkin*, 248 N. Y. 465), and petitioner was required to answer questions as to his conduct as an attorney, subject to his right to refuse to answer such questions if his answers would expose him to punishment for crime. In



*Appellate Division Decision in the Companion Case  
Reported in 5 A. D. 2d 790-791*

its discretion the additional Special Term might have permitted petitioner's attorney to be present while petitioner was being questioned, since it is clear that he was not merely a witness as to improper conduct of others but was himself a subject of the inquiry as to his own alleged acts of professional misconduct. But the result of the inquiry and investigation as to petitioner would be merely a report and recommendation as to future action, and would not be a final determination as to him. It was not an abuse of discretion for the additional Special Term to exclude petitioner's attorney from the room while petitioner was being questioned, nor was it a violation of his constitutional rights (*People ex rel. McDonald v. Keeler*, 99 N. Y. 463; *Matter of Groban*, 352 U. S. 330; Judiciary Law, § 90). Section 73 of the Civil Rights Law is not applicable to this inquiry and investigation. Since petitioner based his refusal to answer on invalid grounds, he was properly found guilty of contempt (*People v. Berson*, 308 N. Y. 918). A person is not absolved of willful wrong-doing because he relied on his attorney's advice (*People v. Marcus*, 261 N. Y. 268), or on his own belief as to the law. Here the intent to defy the dignity and authority of the court on invalid grounds is clear (see, e.g., *Matter of Berkon v. Mahoney*, 268 App. Div. 825, affd. 294 N. Y. 828; *People v. Berson, supra*). The papers and records shall be sealed and deemed private and confidential, and no one shall have access to them without further order of this court or of the additional Special Term. Present—Wenzel, Acting P. J., Beldock, Murphy, Ughetta and Kleinfeld, JJ.

**Court of Appeals Decision in the Companion Case  
Reported in 4 N. Y. 2d 676**

Anonymous (M.), *Matter of, v. Arkwright* (2d Dept.; 5 A. D. 2d 790) denied.

## APPENDIX B

**Copies of the Determinations and Mandates of the additional Special Term and the final Order of the Appellate Division and of the Court of Appeals.**

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### Contempt Order—Howard Bluestein

At an Additional Special Term of the Supreme Court held in and for the County of Kings at the Borough Hall in Brooklyn, Kings County, New York, on the 24 day of April, 1958, pursuant to a certain order of the Appellate Division made and entered on the 21st day of January, 1957.

Present:

HONORABLE GEORGE A. ARKWRIGHT

*Justice*

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o

In the Matter of the Petition of the Brooklyn Bar Association for a Judicial Inquiry by the Court into Certain Alleged Illegal, Corrupt and Unethical Practices and of Alleged Conduct Prejudicial to the Administration of Justice by Attorneys and Counselors-at-Law, and by Others Acting in Concert with Them, in the County of Kings.

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o

The Appellate Division of the Supreme Court of the State of New York, in and for the Second Judicial Department, on January 21, 1957, having made and entered an order, as amended by an order of said Appellate Division dated February 11, 1957, directing that a Judicial Inquiry and Investigation be made as prayed for in the petition of



*Contempt Order—Howard Bluestein*

the Brooklyn Bar Association dated December 11, 1956; and pursuant to said order, as amended, said Appellate Division having directed that said Judicial Inquiry and Investigation be conducted by the Honorable George A. Arkwright, a Justice of the Supreme Court, at a Special Term of the Supreme Court, County of Kings, with full power to compel the attendance of witnesses, their testimony under oath and the production of all relevant books, papers and records; and pursuant to said order, as amended, the said Appellate Division having appointed an Additional Special Term of the Supreme Court in and for the County of Kings to be held commencing January 22, 1957, at the Court House in Brooklyn, Kings County, New York, or at such other places as the Justice assigned to said Additional Special Term might deem advisable; and pursuant to said order, as amended, said Appellate Division having assigned the said Justice to hold said Additional Special Term; and pursuant to said order, as amended, said Appellate Division having designated Denis M. Hurley, Esq., an attorney and counselor-at-law of 32 Court Street, Brooklyn, New York, to aid said Justice in the conduct of said Judicial Inquiry and Investigation;

And the said Court and said Justice having on the 22nd day of April, 1958, at or about 10:00 o'clock in the forenoon of said day, pending before it and him the said Judicial Inquiry and Investigation, one Howard Bluestein was then and there in open court duly called as a witness by Denis M. Hurley, Esq., pursuant to subpoena theretofore duly issued by said Court and Justice and duly served upon said Howard Bluestein; and the said Howard Bluestein, after having been duly sworn as a witness in said Judicial Inquiry and Investigation, he being a material and necessary witness therein was then and there duly ordered by said Court and Justice to answer the following legal and proper interrogatories:

1. "In the Gotham Claims Bureau is your partner Neal Perducani?"

*Contempt Order—Howard Bluestein*

2. "Is the Gotham Claims Bureau a trade name, a certificate as to which has been filed in the County Clerk's office?"

3. Are you and Mr. Percudani the only partners in that firm?"

4. "Is your place of business at 16 Court Street, Brooklyn?"

5. "How many employees do you have in your business?"

6. "Will you please name the employees you have in your concern, Gotham Claims Bureau, 16 Court Street?"

7. "Does your firm Gotham Claims Bureau do work for attorneys?"

8. "Does your company do work for an attorney named I. Frank Miller?"

9. "Has your firm done work for an attorney named David Goldner?"

10. "Have you or your firm done work for Mr. Zangara?"

11. "Have you personally referred any cases, Mr. Bluestein, to Mr. Zangara?"

12. "Do you know, Mr. Bluestein, whether Mr. Zangara has named you in any statements of retainer he filed in the Appellate Division in negligence cases?"

13. "Have you referred any cases to a lawyer named I. Frank Miller?"

14. "Have you referred any cases to a lawyer named David Goldner?"

*Contempt Order—Howard Bluestein*

15. "Will you name the attorneys to whom you have referred cases, negligence cases?"

16. "Have you ever had occasion to hire the services, engage the services of a lawyer in a negligence case?"

and thereupon the said Howard Bluestein did in the immediate view and presence of said Court and Justice, contumaciously, unlawfully and without reasonable or just cause refuse and continue to refuse to answer the above listed legal and proper interrogatories; and said refusal tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution and orderly conduct of said Judicial Inquiry and Investigation ordered as aforesaid by the said Appellate Division and the due and orderly administration of justice;

And the said Court and Justice having ordered that said Howard Bluestein reappear before said Court and Justice on April 24, 1958;

And the said Howard Bluestein, having reappeared before said Court and Justice on the 24th day of April, 1958, and still being duly sworn as a witness as aforesaid, the said Howard Bluestein having been again asked, in verbatim, the above listed legal and proper interrogatories and having then and there again duly ordered by said Court and Justice to answer the said interrogatories;

And the said Howard Bluestein did again in the immediate view and presence of said Court and Justice, contumaciously, unlawfully, and without reasonable or just cause, refuse and continue to refuse to answer the above listed legal and proper interrogatories; and said refusal tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution and orderly conduct of said Judicial Inquiry and Investigation ordered as aforesaid by said Appellate Division, and the due and orderly administration of justice;

*Commitment—Howard Bluestein*

WHEREUPON AND WHEREFORE, it is hereby ordered and adjudged that the said Howard Bluestein still duly sworn as a witness and now present before said Court and Justice and still refusing to answer the above listed legal and proper interrogatories, as aforesaid, is guilty of a criminal contempt (Sections 750 (5), 751, Judiciary Law), by reason of the aforesaid contumacious, unlawful and unreasonable conduct and it is further hereby ordered and adjudged that said Howard Bluestein be imprisoned and held in close custody in jail in the County of Kings, for thirty (30) days; and it is further hereby ordered and adjudged that this order be sealed and impounded and the County Clerk is hereby directed to prohibit access to this order without further order of this Court.

Let a commitment issue accordingly.

Enter

GEORGE A. ARKWRIGHT  
Justice, Supreme Court of the  
State of New York

*Commitment—Howard Bluestein*

THE PEOPLE OF THE STATE OF NEW YORK

To the Sheriff of the City of New York, Kings County  
Division, GREETING:

WHEREAS the Appellate Division of the Supreme Court of the State of New York in and for the Second Judicial Department, on January 21, 1957, made and entered an order, as amended by an order of said Appellate Division dated February 11, 1957, directing that a Judicial Inquiry and Investigation be made as prayed for in the petition of

*Commitment—Howard Bluestein*

the Brooklyn Bar Association dated December 11, 1956, and whereas, pursuant to said order, as amended, the said Appellate Division directed that said Judicial Inquiry and Investigation be conducted by the Honorable George A. Arkwright, a Justice of the Supreme Court, at a Special Term of the Supreme Court, County of Kings, with full power to compel the attendance of witnesses, their testimony under oath and the production of all relevant books, papers and records; and whereas pursuant to said order, as amended, the said Appellate Division appointed an Additional Special Term of the Supreme Court in and for the County of Kings to be held commencing January 22, 1957, at the Court House in Brooklyn, Kings County, New York, or at such other places as the Justice assigned to said Additional Special Term might deem advisable; and whereas, pursuant to said order, as amended, said Appellate Division assigned the said Justice to hold said Additional Special Term; and whereas, pursuant to said order, as amended, said Appellate Division designated Denis M. Hurley, Esq., an attorney and counselor-at-law of 32 Court Street, Brooklyn, New York, to aid said Justice in the conduct of said Judicial Inquiry and Investigation;

And whereas said Court and said Justice on the 22nd day of April, 1958, at or about 10:00 o'clock in the forenoon of said day had pending before it and him the said Judicial Inquiry and Investigation; and whereas one Howard Bluestein was then and there in open court duly called as a witness by Denis M. Hurley, Esq., counsel in said Judicial Inquiry and Investigation, pursuant to subpoena theretofore duly issued by said Court and Justice and duly served upon said Howard Bluestein; and whereas the said Howard Bluestein after having been duly sworn as a witness in said Judicial Inquiry and Investigation, he being a material and necessary witness therein, was then and there duly ordered by said Court and Justice to answer the following legal and proper interrogatories:



*Commitment—Howard Bluestein*

1. "In the Gotham Claims Bureau is your partner Neal Perducani?"

2. "Is the Gotham Claims Bureau a trade name, a certificate as to which has been filed in the County Clerk's office?"

3. "Are you and Mr. Percudani the only partners in that firm?"

4. "Is your place of business at 16 Court Street, Brooklyn?"

5. "How many employees do you have in your business?"

6. "Will you please name the employees you have in your concern, Gotham Claims Bureau, 16 Court Street?"

7. "Does your firm Gotham Claims Bureau do work for attorneys?"

8. "Does your company do work for an attorney named I. Frank Miller?"

9. "Has your firm done work for an attorney named David Goldner?"

10. "Have you or your firm done work for Mr. Zangara?"

11. "Have you personally referred any cases, Mr. Bluestein, to Mr. Zangara?"

12. "Do you know, Mr. Bluestein, whether Mr. Zangara has named you in any statements of retainer he filed in the Appellate Division in negligence cases?"

13. "Have you referred any cases to a lawyer named I. Frank Miller?"

*Commitment—Howard Bluestein*

14. "Have you referred any cases to a lawyer named David Goldner?"

15. "Will you name the attorneys to whom you have referred cases, negligence cases?"

16. "Have you ever had occasion to hire the services, engage the services of a lawyer in a negligence case?"

and whereas therefore the said Howard Bluestein did in the immediate view and presence of said Court and Justice contumaciously, unlawfully and without reasonable or just cause, refuse and continue to refuse to answer the above listed legal and proper interrogatories; and whereas said refusal tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution and orderly conduct of said Judicial Inquiry and Investigation, ordered as aforesaid by the said Appellate Division, and the due and orderly administration of justice;

And whereas the said Court and Justice having ordered that said Howard Bluestein reappear before said Court and Justice on April 24, 1958;

And whereas the said Howard Bluestein, having reappeared before said Court and Justice on the 24th day of April, 1958, and still being duly sworn as a witness as aforesaid, the said Howard Bluestein having been again asked, in verbatim, the above listed legal and proper interrogatories and having been then and there again duly ordered by said Court and Justice to answer the said interrogatories;

And whereas the said Howard Bluestein did again in the immediate view and presence of said Court and Justice, contumaciously, unlawfully, and without reasonable or just cause, refuse and continue to refuse to answer the above listed legal and proper interrogatories; and said refusal tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution

*Commitment—Howard Bluestein*

and orderly conduct of said Judicial Inquiry and Investigation ordered as aforesaid by said Appellate Division, and the due and orderly administration of justice;

And whereas it was thereupon and therefore ordered and adjudged on April 24, 1958, by said Court and Justice that the said Howard Bluestein then present before said Court and Justice and still refusing to answer the above listed legal and proper interrogatories was and is guilty of a criminal contempt (Sections 750(5), 751, Judiciary Law) by reason of the aforesaid contumacious, unlawful and unreasonable conduct in said Judicial Inquiry and Investigation; and whereas it was then further ordered and adjudged by said Court and Justice on April 24, 1958, that the said Howard Bluestein be imprisoned and held in close custody in jail in the County of Kings, for thirty (30) days;

Now, THEREFORE, we command you that you take the body of the said Howard Bluestein and safely keep him in your close custody in jail in the County of Kings for thirty (30) days; and you are to return this writ and to make and return to said Supreme Court in Kings County a certificate under your hand of the manner in which you have executed the same; and we further command you that you seal and impound this writ and you are to prohibit access to this writ without further command from this Court.

WITNESS, Honorable George A. Arkwright, one of the Justices of the Supreme Court, at the Borough Hall in the Borough of Brooklyn, County of Kings, City and State of New York, this 24 day of April, 1958.

By the Court

JOSEPH B. WHITTY  
Clerk

GEORGE A. ARKWRIGHT  
J. S. C.

## Order Confirming Determination

At a Term of the Appellate Division of the  
Supreme Court of the State of New York  
held in and for the Second Judicial Depart-  
ment at the Borough of Brooklyn, on the  
26th day of May, 1958.

Present:

HON. GERALD NOLAN, *Presiding Justice*,

“ HENRY G. WENZEL, JR.,

“ GEORGE J. BELDOCK,

“ HENRY L. UGHETTA,

“ JAMES T. HALLINAN,

*Justices.*

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In the Matter of the Application of

ANONYMOUS No. 6,

Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act, to review and annul the determination and mandate of the HONORABLE GEORGE A. ARKWRIGHT, as Justice of the Supreme Court,

Respondent.

---

¶ The above named Anonymous No. 6, the petitioner in this proceeding having made an application, pursuant to Article 78 of the Civil Practice Act, to the Appellate Division of the Supreme Court in the Second Judicial Department, by petition sworn to the 25th day of April, 1958, to review and annul the determination and order of the Additional Special Term of the Supreme Court, Kings County, made and entered in the office of the Clerk of the County of Kings on April 24th, 1958, adjudging petitioner guilty

*Order Confirming Determination*

of criminal contempt and ordering his imprisonment in jail in the County of Kings for thirty days, and the said proceeding having come on for hearing before this court, by an order to show cause dated April 26th, 1958.

Now on reading and filing the order 'to show cause, dated April 26th, 1958, the petition sworn to April 25th, 1958, petitioner's brief, the answer and return of respondent, the minutes of April 22, 1958, the order of April 24th, 1958, and all the papers filed herein, and Mr. Raphael H. Weissman appearing for petitioner, and Mr. Denis M. Hurley appearing for respondent, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed:

IT IS ORDERED AND ADJUDGED that the determination of respondent be and the same hereby is unanimously confirmed, without costs.

Enter:

JOHN J. CALLAHAN  
Clerk



# Order Dismissing Appeal

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the twenty-fifth day of June A. D. 1958.

Present:

HON. ALBERT CONWAY,  
*Chief Judge, presiding.*

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In the Matter of the Application of

ANONYMOUS No. 6,

Appellant,

for an Order pursuant to Article 78 C. P. A. to review and annul the determination and mandate of the HONORABLE GEORGE A. ARKWRIGHT, as Justice of the Supreme Court,  
Respondent.

---

A motion having heretofore been made upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and appeal dismissed upon the ground that no substantial constitutional question is involved.

A copy

GEARON KIMBALL  
Deputy Clerk

## **Contempt Order—Neal Percudani**

At an Additional Special Term of the Supreme Court held in and for the County of Kings at the Borough Hall in Brooklyn, Kings County, New York, on the 24th day of April, 1958, pursuant to a certain order of the Appellate Division made and entered on the 21st day of January, 1957.

**Present:**

**Honorable GEORGE A. ARKWRIGHT**

*Justice*

---

In the Matter of the Petition of the Brooklyn Bar Association for a Judicial Inquiry by the Court into Certain Alleged Illegal, Corrupt and Unethical Practices and of Alleged Conduct Prejudicial to the Administration of Justice by Attorneys and Counselors-at-Law, and by Others Acting in Concert with Them, in the County of Kings.

---

The Appellate Division of the Supreme Court of the State of New York, in and for the Second Judicial Department, on January 21, 1957, having made and entered an order, as amended by an order of said Appellate Division dated February 11, 1957, directing that a Judicial Inquiry and Investigation be made as prayed for in the petition of the Brooklyn Bar Association dated December 11, 1956; and pursuant to said order, as amended, said Appellate Division having directed that said Judicial Inquiry and Investigation be conducted by the Honorable George A. Arkwright, a Justice of the Supreme Court, at a Special Term of the Supreme Court, County of Kings, with full power to compel the attendance of witnesses, their testimony under oath and the production of all relevant books, papers and records; and pursuant to said order, as amended, the said Appellate Division having appointed an

*Contempt Order—Neal Percudani*

Additional Special Term of the Supreme Court in and for the County of Kings to be held commencing January 22, 1957, at the Court House in Brooklyn, Kings County, New York, or at such other places as the Justice assigned to said Additional Special Term might deem advisable; and pursuant to said order, as amended, said Appellate Division having assigned the said Justice to hold said Additional Special Term; and pursuant to said order, as amended, said Appellate Division having designated Denis M. Hurley, Esq., an attorney and counselor-at-law of 32 Court Street, Brooklyn, New York, to aid said Justice in the conduct of said Judicial Inquiry and Investigation;

And the said Court and said Justice having on the 22nd day of April, 1958, at or about 10:00 o'clock in the forenoon of said day, pending before it and him the said Judicial Inquiry and Investigation, one Neal Percudani was then and there in open court duly called as a witness by Denis M. Hurley, Esq., pursuant to subpoena theretofore duly issued by said Court and Justice and duly served upon said Neal Percudani; and the said Neal Percudani, after having been duly sworn as a witness in said Judicial Inquiry and Investigation, he being a material and necessary witness therein was then and there duly ordered by said Court and Justice to answer the following legal and proper interrogatories:

1. "Mr. Percudani, are you connected in some way or any way with Gotham Claims Bureau located in Brooklyn, New York?"

2. "Mr. Percudani, prior to the time you set up or organized this Gotham Claims Bureau, did you work for one of the insurance companies in New York City, specifically—"

3. "In connection with Gotham Claims Bureau, Mr. Percudani, would you tell this Court what attorneys you do investigating work for?"

*Contempt Order—Neal Percudani*

4. "How long have you been in business as the Gotham Claims Bureau, Mr. Percudani, you or Mr. Bluestein?"

5. "Prior to forming the Gotham Claims Bureau, were you in the employ of the Consolidated Mutual Insurance Company as an investigator?"

6. "Mr. Percudani, did you work in connection with your business, the Gotham Claims Bureau, for an attorney named I. Frank Miller at any time?"

7. "Mr. Percudani, did you in connection with your business, the Gotham Claims Bureau, do work at any time for an attorney named Jerome Edelman, E-d-e-l-m-a-n?"

8. "Is your work in the Gotham Claims Bureau basically or primarily concerned with investigations for attorneys, Mr. Percudani?"

9. "Mr. Percudani, how old are you, sir?"

10. "Where do you live now, Mr. Percudani?"

11. "Mr. Percudani, were you born in 1903?"

12. "Do you now reside at 1489 Lake Shore Drive, Massapequa, Long Island?"

13. "Are you married, Mr. Percudani?"

14. "Let me ask you this: Is the Gotham Claims Agency a trade name?"

15. "And are you and Mr. Bluestein the only partners in that concern?"

16. "Are your offices at 16 Court Street, Brooklyn, New York, sir?"

17. "Is the principal work of Gotham Claims Bureau investigating cases for attorneys?"

*Contempt Order—Neal Percudani*

18. "Have you personally, Mr. Percudani, referred any cases to attorneys?"

19. "Have you done any investigating work for an attorney named David Goldner?"

20. "Have you referred a number of cases to Mr. Goldner?"

21. "Have you produced today, Mr. Percudani, your financial records?"

22. "Have you produced your records, reports, statements, bills pertaining to any and all investigations or business of any nature for or concerning I. Frank Miller, attorney, 50 Court Street, Brooklyn, and any other attorney or attorneys that engaged your concern for investigations or adjustments of claims, all as outlined in the subpoenas duces tecum that were served upon you? Have you produced those records?"

23. "Mr. Zangara, who was in the courtroom before, he is your attorney, is he, sir?"

24. "Who is the attorney who represented you and your firm, Gotham Claims Bureau, in the courtroom this morning?"

and thereupon the said Neal Percudani did in the immediate view and presence of said Court and Justice, contumaciously, unlawfully and without reasonable or just cause refuse and continue to refuse to answer the above listed legal and proper interrogatories; and said refusal tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution and orderly conduct of said Judicial Inquiry and Investigation ordered as aforesaid by the said Appellate Division and the due and orderly administration of justice;

And the said Court and Justice having ordered that said Neal Percudani reappear before said Court and Justice on April 24, 1958;



*Contempt Order—Neal Percudani*

And the said Neal Percudani having reappeared before said Court and Justice on the 24th day of April, 1958, and still being duly sworn as a witness as aforesaid, the said Neal Percudani having been again asked, in verbatim, the above listed legal and proper interrogatories and having been then and there again duly ordered by said Court and Justice to answer the said interrogatories;

And the said Neal Percudani did again in the immediate view and presence of said Court and Justice, contumaciously, unlawfully, and without reasonable or just cause, refuse and continue to refuse to answer the above listed legal and proper interrogatories; and said refusal tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution and orderly conduct of said Judicial Inquiry and Investigation ordered as aforesaid by said Appellate Division, and the due and orderly administration of justice;

WHEREUPON AND WHEREFORE, it is hereby ordered and adjudged that the said Neal Percudani still duly sworn as a witness and now present before said Court and Justice and still refusing to answer the above listed legal and proper interrogatories, as aforesaid, is guilty of a criminal contempt (Sections 750 (5), 751, Judiciary Law), by reason of the aforesaid contumacious, unlawful and unreasonable conduct and it is further hereby ordered and adjudged that said Neal Percudani be imprisoned and held in close custody in jail in the County of Kings for thirty (30) days; and it is further hereby ordered and adjudged that this order be sealed and impounded and the County Clerk is hereby directed to prohibit access to this order without further order of this Court.

Let a commitment issue, accordingly.

Enter

GEORGE A. ARKWRIGHT,  
*Justice, Supreme Court of the  
State of New York.*

## Commitment—Neal Percudani

THE PEOPLE OF THE STATE OF NEW YORK

*To the Sheriff of the City of New York, Kings County  
Division, GREETING:*

WHEREAS the Appellate Division of the Supreme Court of the State of New York in and for the Second Judicial Department, on January 21, 1957, made and entered an order, as amended by an order of said Appellate Division dated February 11, 1957, directing that a Judicial Inquiry and Investigation be made as prayed for in the petition of the Brooklyn Bar Association dated December 11, 1956; and whereas, pursuant to said order, as amended, the said Appellate Division directed that said Judicial Inquiry and Investigation be conducted by the Honorable George A. Arkwright, a Justice of the Supreme Court, at a Special Term of the Supreme Court, County of Kings, with full power to compel the attendance of witnesses, their testimony under oath and the production of all relevant books, papers and records; and whereas pursuant to said order, as amended, the said Appellate Division appointed an Additional Special Term of the Supreme Court in and for the County of Kings to be held commencing January 22, 1957, at the Court House in Brooklyn, Kings County, New York, or at such other places as the Justice assigned to said Additional Special Term might deem advisable; and whereas, pursuant to said order, as amended, said Appellate Division assigned the said Justice to hold said Additional Special Term; and whereas, pursuant to said order, as amended, said Appellate Division designated Denis M. Hurley, Esq., an attorney and counselor-at-law of 32 Court Street, Brooklyn, New York, to aid said Justice in the conduct of said Judicial Inquiry and Investigation;

And whereas said Court and said Justice on the 22nd day of April, 1958, at or about 10:00 o'clock in the forenoon of said day had pending before it and him the said Judicial Inquiry and Investigation; and whereas one Neal Percudani

*Commitment—Neal Percudani*

was then and there in open court duly called as a witness by Denis M. Hurley, Esq., counsel in said Judicial Inquiry and Investigation, pursuant to subpoena theretofore duly issued by said Court and Justice and duly served upon said Neal Percudani; and whereas the said Neal Percudani after having been duly sworn as a witness in said Judicial Inquiry and Investigation, he being a material and necessary witness therein, was then and there duly ordered by said Court and Justice to answer the following legal and proper interrogatories:

1. "Mr. Percudani, are you connected in some way or any way with Gotham Claims Bureau located in Brooklyn, New York?"

2. "Mr. Percudani, prior to the time you set up or organized this Gotham Claims Bureau, did you work for one of the insurance companies in New York City, specifically—"

3. "In connection with Gotham Claims Bureau, Mr. Percudani, would you tell this Court what attorneys you do investigating work for?"

4. "How long have you been in business as the Gotham Claims Bureau, Mr. Percudani, you or Mr. Bluestein?"

5. "Prior to forming the Gotham Claims Bureau, were you in the employ of the Consolidated Mutual Insurance Company as an investigator?"

6. "Mr. Percudani, did you work in connection with your business, the Gotham Claims Bureau, for an attorney named I. Frank Miller at any time?"

7. "Mr. Percudani, did you in connection with your business, the Gotham Claims Bureau, do work at any time for an attorney named Jerome Edelman, E-d-e-l-m-a-n?"

*Commitment—Neal Percudani*

8. "Is your work in the Gotham Claims Bureau basically or primarily concerned with investigations for attorneys, Mr. Percudani?"

9. "Mr. Percudani, how old are you, sir?"

10. "Where do you live now, Mr. Percudani?"

11. "Mr. Percudani, were you born in 1903?"

12. "Do you now reside at 1489 Lake Shore Drive, Massapequa, Long Island?"

13. "Are you married, Mr. Percudani?"

14. "Let me ask you this: Is the Gotham Claims Agency a trade name?"

15. "And are you and Mr. Bluestein the only partners in that concern?"

16. "Are your offices at 16 Court Street, Brooklyn, New York, sir?"

17. "Is the principal work of Gotham Claims Bureau investigating cases for attorneys?"

18. "Have you personally, Mr. Percudani, referred any cases to attorneys?"

19. "Have you done any investigating work for an attorney named David Goldner?"

20. "Have you referred a number of cases to Mr. Goldner?"

21. "Have you produced today, Mr. Percudani, your financial records?"

22. "Have you produced your records, reports, statements, bills pertaining to any and all investigations or business of any nature for or concerning I. Frank Miller, attorney, 50 Court Street, Brooklyn, and any other attorney or attorneys that engaged your concern for investigations or adjustments of

*Commitment—Neal Percudani*

claims, all as outlined in the subpoenas duces tecum that were served upon you? Have you produced those records?"

23. "Mr. Zangara, who was in the courtroom before, he is your attorney, is he, sir?"

24. "Who is the attorney who represented you and your firm, Gotham Claims Bureau, in the courtroom this morning?"

and whereas therefore the said Neal Percudani did in the immediate view and presence of said Court and Justice contumaciously, unlawfully and without reasonable or just cause, refuse and continue to refuse to answer the above listed legal and proper interrogatories: and whereas said refusal tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution and orderly conduct of said Judicial Inquiry and Investigation, ordered as aforesaid by the said Appellate Division, and the due and orderly administration of justice;

And whereas the said Court and Justice having ordered that said Neal Percudani reappear before said Court and Justice on April 24, 1958;

And whereas the said Neal Percudani, having reappeared before said Court and Justice on the 24th day of April, 1958, and still being duly sworn as a witness as aforesaid, the said Neal Percudani having been again asked, in verbatim, the above listed legal and proper interrogatories and having been then and there again duly ordered by said Court and Justice to answer the said interrogatories;

And whereas the said Neal Percudani did again in the immediate view and presence of said Court and Justice, contumaciously, unlawfully, and without reasonable or just cause, refuse and continue to refuse to answer the above listed legal and proper interrogatories; and said refusal



*Commitment—Neal Percudani*

tended and still tends to impair, impede, prejudice, obstruct, hinder and delay the due and effectual prosecution and orderly conduct of said Judicial Inquiry and Investigation ordered as aforesaid by said Appellate Division, and the due and orderly administration of justice;

And whereas it was thereupon and therefore ordered and adjudged on April 24, 1958 by said Court and Justice that the said Neal Percudani then present before said Court and Justice and still refusing to answer the above listed legal and proper interrogatories was and is guilty of a criminal contempt (Sections 750(5), 751, Judiciary Law) by reason of the aforesaid contumacious, unlawful and unreasonable conduct in said Judicial Inquiry and Investigation; and whereas it was then further ordered and adjudged on April 24, 1958 by said Court and Justice that the said Neal Percudani be imprisoned and held in close custody in jail in the County of Kings, for thirty (30) days;

Now, THEREFORE, we command you that you take the body of the said Neal Percudani and safely keep him in your close custody in jail in the County of Kings for thirty (30) days; and you are to return this writ and make and return to said Supreme Court in Kings County a certificate under your hand of the manner in which you have executed the same; and we further command you that you seal and impound this writ and you are to prohibit access to this writ without further command from this Court;

WITNESS HONORABLE GEORGE A. ARKWRIGHT, one of the Justices of the Supreme Court, at the Borough Hall in the Borough of Brooklyn, County of Kings, City and State of New York, this 24th day of April, 1958.

By the Court

JOSEPH B. WHITTY,  
Clerk.

GEORGE A. ARKWRIGHT,  
J. S. C.

## Order Confirming Determination

At a Term of the Appellate Division of the  
Supreme Court of the State of New York  
held in and for the Second Judicial Department  
at the Borough of Brooklyn, on the  
26th day of May, 1958.

Present:

HON. GERALD NOLAN, *Presiding Justice*,

" HENRY G. WENZEL, JR.,

" GEORGE J. BELDOCK,

" HENRY L. UGHETTA,

" JAMES T. HALLINAN,

*Justices.*

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In the Matter of the Application of  
ANONYMOUS No. 7,

Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act, to review and annul the determination and mandate of the HONORABLE GEORGE A. ARKWRIGHT, as Justice of the Supreme Court.

Respondent.

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The above named Anonymous No. 7, the petitioner in this proceeding having made an application, pursuant to Article 78 of the Civil Practice Act, to the Appellate Division of the Supreme Court in the Second Judicial Department, by petition sworn to the 25th day of April, 1958, to review and annul the determination and order of the Additional Special Term of the Supreme Court, Kings County, made and entered in the office of the Clerk of the County of Kings on April 24th, 1958, adjudging

*Order Confirming Determination*

petitioner guilty of criminal contempt and ordering his imprisonment in jail in the County of Kings for thirty days, and the said proceeding having come on for hearing before this court, by an order to show cause, dated April 26th, 1958.

Now on reading and filing the order to show cause, dated April 26th, 1958, the petition sworn to April 25th, 1958, petitioner's brief, the answer and return of respondent, the minutes of April 22, 1958, the order of April 24th, 1958, and all the papers filed herein, and Mr. Raphael H. Weissman appearing for petitioner, and Mr. Denis M. Hurley appearing for respondent, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed:

IT IS ORDERED AND ADJUDGED that the determination of respondent be and the same hereby is unanimously confirmed, without costs.

Enter,

JOHN J. CALLAHAN,  
Clerk.

# **Order Dismissing Appeal**

## **STATE OF NEW YORK**

### **IN COURT OF APPEALS**

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the twenty-fifth day of June, A. D. 1958.

Present:

**HON. ALBERT CONWAY, Chief Judge, presiding**

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In the Matter of the Application of  
**ANONYMOUS No. 7,**

**Appellant,**

for an Order pursuant to Article 78 C. P. A. to review and annul the determination and mandate of the **HONORABLE GEORGE A. ARKWRIGHT, as Justice of the Supreme Court,**

**Respondent.**

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A motion having heretofore been made upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

**ORDERED,** that the said motion be and the same hereby is granted and appeal dismissed upon the ground that no substantial constitutional question is involved.

A copy,

**GEARON KIMBALL,**  
Deputy Clerk.